

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 757
91ST GENERAL ASSEMBLY

Reported from the Committee on Public Health and Welfare, April 12, 2001, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

TERRY L. SPIELER, Secretary.

1874S.03C

AN ACT

To repeal sections 338.030, 338.043, 338.055, 338.210, 338.220, 338.285 and 338.353, RSMo 2000, relating to practice of pharmacy, and to enact in lieu thereof seven new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 338.030, 338.043, 338.055, 338.210, 338.220, 338.285 and 338.353, RSMo 2000, are repealed and seven new sections enacted in lieu thereof, to be known as sections 338.030, 338.043, 338.055, 338.210, 338.220, 338.285 and 338.353, to read as follows:

338.030. An applicant for examination shall be twenty-one years of age and in addition shall furnish satisfactory evidence of [his] **the applicant's** good moral character and [a certificate of graduation from an accredited high school or its equivalent,] have had one year practical experience under the supervision of a licensed pharmacist within a licensed pharmacy, or other location approved by the board, and shall be a graduate of a school or college of pharmacy whose requirements for graduation are satisfactory to and approved by the board of pharmacy.

338.043. 1. Notwithstanding any provision of law to the contrary, the board of pharmacy may grant a temporary license to an applicant who meets such requirements as the board may prescribe by rule and regulation.

2. [The temporary license provided in subsection 1 of this section shall limit the right of the licensee to practice only in locations approved by the board under the supervision of a pharmacist licensed to practice pharmacy in this state.

3.] The license shall be renewable at the discretion of and with the approval of the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

8 board of pharmacy. A temporary license fee shall accompany the original application for a
9 temporary license and a similar amount shall be paid in the event the temporary license is
10 renewed.

338.055. 1. The board may refuse to issue any certificate of registration or authority,
2 permit or license required pursuant to this chapter for one or any combination of causes
3 stated in subsection 2 of this section. The board shall notify the applicant in writing of the
4 reasons for the refusal and shall advise the applicant of his **or her** right to file a complaint
5 with the administrative hearing commission as provided by chapter 621, RSMo.

6 2. The board may cause a complaint to be filed with the administrative hearing
7 commission as provided by chapter 621, RSMo, against any holder of any certificate of
8 registration or authority, permit or license required by this chapter or any person who has
9 failed to renew or has surrendered his certificate of registration or authority, permit or license
10 for any one or any combination of the following causes:

11 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic
12 beverage to an extent that such use impairs a person's ability to perform the work of any
13 profession licensed or regulated by this chapter;

14 (2) The person has been finally adjudicated and found guilty, or entered a plea of
15 guilty or nolo contendere, in a criminal prosecution [under] **pursuant to** the laws of any state
16 or of the United States, for any offense reasonably related to the qualifications, functions or
17 duties of any profession licensed or regulated [under] **pursuant to** this chapter, for any
18 offense an essential element of which is fraud, dishonesty or an act of violence, or for any
19 offense involving moral turpitude, whether or not sentence is imposed;

20 (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate
21 of registration or authority, permit or license issued pursuant to this chapter or in obtaining
22 permission to take any examination given or required pursuant to this chapter;

23 (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation
24 by fraud, deception or misrepresentation;

25 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or
26 dishonesty in the performance of the functions or duties of any profession licensed or
27 regulated by this chapter;

28 (6) Violation of, or assisting or enabling any person to violate, any provision of this
29 chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

30 (7) Impersonation of any person holding a certificate of registration or authority,
31 permit or license or allowing any person to use his or her certificate of registration or
32 authority, permit, license or diploma from any school;

33 (8) Disciplinary action against the holder of a license or other right to practice any

34 profession regulated by this chapter granted by another state, territory, federal agency or
35 country upon grounds for which revocation or suspension is authorized in this state;

36 (9) A person is finally adjudged incapacitated by a court of competent jurisdiction;

37 (10) Assisting or enabling any person to practice or offer to practice any profession
38 licensed or regulated by this chapter who is not registered and currently eligible to practice
39 **[under] pursuant to** this chapter;

40 (11) Issuance of a certificate of registration or authority, permit or license based upon
41 a material mistake of fact;

42 (12) Failure to display a valid certificate or license if so required by this chapter or
43 any rule promulgated hereunder;

44 (13) Violation of any professional trust or confidence;

45 (14) Use of any advertisement or solicitation which is false, misleading or deceptive
46 to the general public or persons to whom the advertisement or solicitation is primarily
47 directed;

48 (15) Violation of the drug laws or rules and regulations of this state, any other state
49 or the federal government;

50 (16) The intentional act of substituting or otherwise changing the content, formula
51 or brand of any drug prescribed by written or oral prescription without prior written or oral
52 approval from the prescriber for the respective change in each prescription; provided,
53 however, that nothing contained herein shall prohibit a pharmacist from substituting or
54 changing the brand of any drug as provided **[under] pursuant to** section 338.056, and any
55 such substituting or changing of the brand of any drug as provided for in section 338.056 shall
56 not be deemed unprofessional or dishonorable conduct unless a violation of section 338.056
57 occurs;

58 **(17) Personal use or consumption of any controlled substance unless it is**
59 **prescribed, dispensed or administered by a health care provider who is authorized**
60 **by law to do so.**

61 3. After the filing of such complaint, the proceedings shall be conducted in accordance
62 with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing
63 commission that the grounds, provided in subsection 2, for disciplinary action are met, the
64 board may, singly or in combination, censure or place the person named in the complaint on
65 probation on such terms and conditions as the board deems appropriate for a period not to
66 exceed five years, or may suspend, for a period not to exceed three years, or revoke the license,
67 certificate, or permit. The board may impose additional discipline on a licensee, registrant
68 or permittee found to have violated any disciplinary terms previously imposed **[under]**
69 **pursuant to** this section or by agreement. The additional discipline may include, singly or

70 in combination, censure, placing the licensee, registrant or permittee named in the complaint
71 on additional probation on such terms and conditions as the board deems appropriate, which
72 additional probation shall not exceed five years, or suspension for a period not to exceed three
73 years, or revocation of the license, certificate or permit.

74 4. If the board concludes that a pharmacist has committed an act or is engaging in
75 a course of conduct which would be grounds for disciplinary action which constitutes a clear
76 and present danger to the public health and safety, the board may file a complaint before the
77 administrative hearing commission requesting an expedited hearing and specifying the
78 activities which give rise to the danger and the nature of the proposed restriction or
79 suspension of the pharmacist's license. Within fifteen days after service of the complaint on
80 the pharmacist, the administrative hearing commission shall conduct a preliminary hearing
81 to determine whether the alleged activities of the pharmacist appear to constitute a clear and
82 present danger to the public health and safety which justify that the pharmacist's license be
83 immediately restricted or suspended. The burden of proving that a pharmacist is a clear and
84 present danger to the public health and safety shall be upon the state board of
85 pharmacy. The administrative hearing commission shall issue its decision immediately after
86 the hearing and shall either grant to the board the authority to suspend or restrict the license
87 or dismiss the action.

88 5. If the administrative hearing commission grants temporary authority to the board
89 to restrict or suspend the pharmacist's license, such temporary authority of the board shall
90 become final authority if there is no request by the pharmacist for a full hearing within thirty
91 days of the preliminary hearing. The administrative hearing commission shall, if requested
92 by the pharmacist named in the complaint, set a date to hold a full hearing **[under] pursuant**
93 **to** the provisions of chapter 621, RSMo, regarding the activities alleged in the initial
94 complaint filed by the board.

95 6. If the administrative hearing commission dismisses the action filed by the board
96 pursuant to subsection 4 of this section, such dismissal shall not bar the board from initiating
97 a subsequent action on the same grounds.

338.210. 1. As used in sections 338.210 to 338.300 "pharmacy" shall mean [any
2 pharmacy, drug, chemical store, or apothecary shop, conducted for the purpose of
3 compounding, and dispensing or retailing of any drug, medicine, chemical or poison when
4 used in the compounding of a physician's prescription.] **any location where the practice**
5 **of pharmacy occurs or such activities are offered or provided by a pharmacist or**
6 **another acting under the supervision and authority of a pharmacist, including**
7 **every premises or other place where:**

8 (1) The practice of pharmacy is offered or conducted;

9 **(2) Drugs, chemicals, medicines, prescriptions or poisons are compounded,**
10 **prepared, dispensed, or sold or offered for sale at retail;**

11 **(3) The words "pharmacist", "apothecary", "drugstore", "drugs" and other**
12 **symbols, words or phrases of similar meaning or understanding are used in any**
13 **form to advertise retail products or services;**

14 **(4) Patient records or other information is maintained for the purpose of**
15 **engaging or offering to engage in the practice of pharmacy or to comply with any**
16 **relevant laws regulating the acquisition, possession, handling, transfer, sale or**
17 **destruction of drugs, chemicals, medicines, prescriptions or poisons.**

18 **2. All activity or conduct involving the practice of pharmacy as it relates to**
19 **an identifiable prescription or drug order shall occur at the pharmacy location**
20 **where such identifiable prescription or drug order is first presented by the patient**
21 **or the patient's authorized agent for preparation and dispensing, unless otherwise**
22 **expressly authorized by the board.**

23 **3. The requirements set forth in subsection 2 of this section shall not be**
24 **construed to bar the complete transfer of an identifiable prescription or drug order**
25 **pursuant to a verbal request by or the written consent of the patient or the**
26 **patient's authorized agent.**

27 **4. The board is hereby authorized to enact rules waiving the requirements**
28 **stated in subsection 2 of this section and establishing such terms and conditions as**
29 **it deems necessary, whereby any activities related to the preparation, dispensing**
30 **or recording of an identifiable prescription or drug order may be shared between**
31 **separately licensed facilities.**

32 **5. If a violation of this chapter or other relevant law occurs in connection**
33 **with or adjunct to the preparation or dispensing of a prescription or drug order,**
34 **any permit holder or pharmacist in charge at any facility participating in the**
35 **preparation, dispensing or distribution of a prescription or drug order may be**
36 **deemed vicariously responsible for such violation.**

338.220. 1. It shall be unlawful for any person, copartnership, association,
2 corporation or any other business entity to open, establish, operate or maintain any
3 pharmacy, as defined by statute without first obtaining a permit or license to do so from the
4 Missouri board of pharmacy. The following classes of pharmacy permits or licenses are
5 hereby established:

- 6 (1) Class A: Community/ambulatory;
7 (2) Class B: Hospital outpatient pharmacy;
8 (3) Class C: Long-term care;
9 (4) Class D: Home health care;

- 10 (5) Class E: Radio pharmaceutical;
- 11 (6) Class F: Renal dialysis;
- 12 (7) Class G: Medical gas;
- 13 (8) Class H: Sterile product compounding;
- 14 (9) Class I: Consultant services;
- 15 **(10) Class J: Shared service.**

16 2. Application for such permit or license shall be made upon a form furnished to the
17 applicant; shall contain a statement that it is made under oath or affirmation and that its
18 representations are true and correct to the best knowledge and belief of the person signing
19 same, subject to the penalties of making a false affidavit or declaration; and shall be
20 accompanied by a permit or license fee. The permit or license issued shall be renewable upon
21 payment of a renewal fee. Separate applications shall be made and separate permits or
22 licenses required for each pharmacy opened, established, operated or maintained by the same
23 owner.

24 3. All permits, licenses or renewal fees collected pursuant to the provisions of sections
25 338.210 to 338.370 shall be deposited in the state treasury to the credit of the Missouri board
26 of pharmacy fund, to be used by the Missouri board of pharmacy in the enforcement of the
27 provisions of sections 338.210 to 338.370, when appropriated for that purpose by the general
28 assembly.

338.285. The board is hereby authorized and empowered, when examination or
2 inspection of a pharmacy shall disclose to the board that the pharmacy is not being operated
3 or conducted according to such legal rules and regulations and the laws of Missouri with
4 respect thereto, to cause a complaint to be filed before the administrative hearing commission
5 pursuant to **section 338.055 and** chapter 621, RSMo, charging the holder of a permit to
6 operate a pharmacy with conduct constituting grounds for suspension or revocation of his **or**
7 **her** permit.

338.353. 1. The board of pharmacy is hereby authorized and empowered, when
2 complaints, examinations or inspection of a wholesale drug distributor or pharmacy
3 distributor disclose to the board that a wholesale drug distributorship or pharmacy
4 distributorship is not being operated or conducted according to such legal rules and
5 regulations and the laws of Missouri or any other state or the federal government with respect
6 thereto, to cause a complaint to be filed before the administrative hearing commission
7 pursuant to **section 338.055 and** chapter 621, RSMo, charging the holder of a license to
8 operate a drug distributorship or pharmacy wholesale operation constituting grounds for
9 probation, suspension or revocation of the distributor license.

10 2. If the board concludes that a wholesale drug distributor or pharmacy distributor

11 has committed an act or is engaging in a course of conduct which constitutes a clear and
12 present danger to the public health and safety in Missouri, the board may file a complaint
13 before the administrative hearing commission requesting an expedited hearing and specifying
14 the activities which give rise to the danger and the nature of the proposed restriction or
15 suspension of the wholesale drug distributor's or pharmacy distributor's license. Within
16 fifteen days after service of the complaint on a wholesale drug distributor or pharmacy
17 distributor, the administrative hearing commission shall conduct a preliminary hearing to
18 determine whether the alleged activities of the wholesale drug distributor or pharmacy
19 distributor appear to constitute a clear and present danger to the public health and safety
20 which justify that the wholesale drug distributor's or pharmacy distributor's license be
21 immediately restricted or suspended. The burden of proving that a wholesale drug distributor
22 or pharmacy distributor is a clear and present danger to the public health and safety shall
23 be upon the state board of pharmacy. The administrative hearing commission shall issue its
24 decision immediately after the hearing and shall either grant to the board the authority to
25 suspend or restrict the license or dismiss the action.

26 3. If the administrative hearing commission grants temporary authority to the board
27 to restrict or suspend the wholesale drug distributor's or pharmacy distributor's license, such
28 temporary authority of the board shall become final authority if there is no request by the
29 wholesale drug distributor or pharmacy distributor for a full hearing within thirty days of the
30 preliminary hearing. The administrative hearing commission shall, if requested by the
31 wholesale drug distributor or pharmacy distributor named in the complaint, set a date to hold
32 a full hearing [under] **pursuant to** the provisions of chapter 621, RSMo, regarding the
33 activities alleged in the initial complaint filed by the board.

34 4. If the administrative hearing commission dismisses the action filed by the board
35 pursuant to subsection 2 of this section, such dismissal shall not bar the board from initiating
36 a subsequent action on the same grounds.